

## Lack of chemists slows drug trials in Bristol County, across Massachusetts

Bristol County District Attorney Sam Sutter talks to the press at Taunton District Court.

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FALL RIVER —

A small bag of cocaine that put a Boston man in jail has now put prosecutors in a bind all over the state of Massachusetts.

A U.S. Supreme Court review of a minor Boston drug case resulted in an order that state chemists must be present for cross examination at every drug trial.

The problem is that there are too many drugs and too few chemists. Prosecutors have run into a wall. They are having difficulty bringing all of their drug cases to trial.

**District Attorney Sam Sutter** is leading the campaign in the state legislature to give prosecutors some help.

Luis Melendez-Diaz of Boston was picked up for questioning in 2001 during a drug investigation in that city. He was handcuffed and placed in a police cruiser. When he got out of the police cruiser, police allege they found a bag containing 19 smaller bags of cocaine.

He was tried in 2004 and convicted. He appealed and the U.S. Supreme Court accepted the case and heard the appeal in 2008. The court issued its ruling in June of 2009, overturning the conviction.

The court ruled Massachusetts violated the Sixth Amendment rights of Melendez-Diaz because prosecutors presented an affidavit in the trial, outlining the tests run by the state chemist that verified that the powder found was cocaine. The court ruled the chemist should have been present to be cross-examined at trial.

Because the chemist was not present at the trial, the case was overturned.

Melendez-Diaz went to trial a second time and was found innocent. Despite that, he is still in prison: He is serving a 10-year sentence in another drug case.

But his legacy lives on.

“We have approximately 40,000 illegal drug possession and drug dealing cases per year in Massachusetts,” Sutter said. “About 10 percent of those, or 4,000, are in Bristol County.

“We have approximately 35 chemists that analyze these drugs for the entire state.”  
About 10 percent of the drug cases go to trial, Sutter said.

“That reality presents substantial problems for the 11 district attorneys. Constantly, these 35 chemists are needed in more than one place on a particular day,” Sutter said.  
Prosecutor Seth Aiken faced that dilemma last week in District Court. He was called forward to explain to Judge Gilbert Nadeau why the commonwealth was not ready to go ahead with the trial of a Fall River man charged with possession of oxycontin.

The chemist who tested the drugs was in another county and would be all day, Aiken said.

“Is there an attempt by the DA or the chemist office to coordinate efforts and roll up cases for the chemists to appear?” Nadeau asked. Aiken admitted he did not know. Nadeau granted a continuance, over the objection of defense lawyer George Paul van Duinwyk.

Getting drug cases to trial is an issue that everyone is grappling with, Judge Nadeau said later when he was off the bench. The requirement to have the chemists in court has existed for only a year. Prior to that, judges accepted affidavits from the chemists swearing to their findings.

“Getting chemists into court, with the workload they already have, is a logistical difficulty,” Nadeau said. “But it does appear the district attorneys have made inroad with the state labs.”

Gov. Deval Patrick is involved. He introduced legislation last year to require defendants to file notice during the pretrial phase if they plan to require a chemist to be present at trial.

“If the status quo is maintained, the court may have to dismiss numerous valid criminal charges in cases in which an analyst is not available for trial,” Patrick wrote in a letter to the legislature.

The proposed law did not pass. It will be introduced again in this legislative session, officials say.

“This problem could be solved with legislation that has been enacted in other states and I hope that takes place during this legislative session,” Sutter said.

Though the requirement is difficult, it is fair, said Peter Elikann, a Boston lawyer who is the expert on criminal law for the Massachusetts Bar Association.

“It is a burden on the prosecution, but the Constitutional right to confront your accuser really trumps all,” he said.

“How in the world do you cross-examine a piece of paper?”

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